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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,109	03/31/2006	Shinji Yoshida	2006-0156A	7173
513	7590	06/25/2010		
WENDEROTH, LIND & PONACK, L.L.P.	EXAMINER			
1030 15th Street, N.W.,	SCHLIENTZ, NATHAN W			
Suite 400 East				
Washington, DC 20005-1503	ART UNIT			
	1616			
	PAPER NUMBER			
NOTIFICATION DATE	DELIVERY MODE			
06/25/2010	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/574,109	YOSHIDA ET AL.
	<b>Examiner</b>	Art Unit
	Nathan W. Schlientz	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 29 March 2010.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1 and 4-19 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 4-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 

Paper No(s)/Mail Date 6/2/10
- 4) Interview Summary (PTO-413)
 

Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Status of the Claims***

Claims 1 and 4-19 are pending in the present application and are examined herein on the merits for patentability. No claim is allowed at this time.

***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 02 June 2010 was filed after the mailing date of the non-final Office action on 28 September 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 4-6, 8, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. (Materials and Structures, 1997).

Walker et al. disclose cement compositions comprising varying proportions of a dark-red residual kaolinite clay soil with a well graded sand, wherein the fine gravel component has a particles size of 2-6 mm, the sand component has a particle size of

0.06-2 mm, the silt component has a particle size of 0.002-0.06 mm, and the clay fraction has a particle size of <0.002 mm; and the mixtures were stabilized using a General Purpose ordinary Portland cement (pg. 546, Section 2.1, Tables 1 and 2). The physical stabilization of soils for construction, by altering their grading with the addition of clay or sand, is a commonly employed technique; and mixing together the clay soil and sand provided a range of soils with characteristics suitable for compressed earth block production (pg. 546, right column, 2<sup>nd</sup> paragraph). The composite soils were formed by mechanically dry mixing together, in a concrete pan mixer, the prepared clay soil and sand for approximately 2-3 minutes, after which the cement was added in proportions of 5% and 10% by mass and mixing continued for a further 60 seconds. Once the dry ingredients were thoroughly mixed, water was gradually added until the appropriate consistency was attained (pg. 546, Section 2.2 and 2<sup>nd</sup> sentence of Section 2.3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1 and 4-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (Materials and Structures, 1997) in view of Okada (JP 07-291699), Nishimura et al. (JP 04-51506 U), Allen et al. (J. Economic Entomology, 1961; and J. Economic Entomology, 1964), and Moriwaki et al. (JP 60-230451).

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

The teachings of Walker et al. are discussed above and incorporated herein by reference.

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Walker et al. do not teach incorporating a termiticide into their concrete mixtures. However, it was well known at the time of the instant invention to include termiticides in concrete to control termite infestation. Okada et al. teach absorbing agents containing a termite-controlling agent absorbed and carried therein and including the absorbing agent in concrete (Abstract). Nishimura et al. teach time-hardening hardenable material containing a termiticide (Abstract). Allen et al. teach concrete fabricated with an insecticide highly toxic to termites, thus preventing termite movement over the concrete or through crevices in foundations. Moriwaki et al. teach treating an underfloor ground

with a termiticide and a self-flowing water-hardening composition comprising a hydraulic cement (Abstract).

**Finding of *prima facie* obviousness**

**Rational and Motivation (MPEP 2142-43)**

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time of the invention to include a termiticide in the concrete/mortar compositions according to Walker et al. in order to control termite infestation, as reasonably taught by Okada, Nishimura et al., Allen et al., and Moriwaki et al.

With respect to the timing of adding water to the cement mixture, it was well within the purview of one of ordinary skill in the art to mix all dry ingredients and either (1) laying the dry mixture to the area to be treated followed by addition of water, or (2) mix the dry ingredients with water prior to laying on the area to be treated.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is 571-272-9924. The examiner can normally be reached on 8:30 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWS

/John Pak/  
Primary Examiner, Art Unit 1616